

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DE'MARIAN A. CLEMONS

Plaintiff - Appellant,

vs.

ROBERT CLINTON HAYES, M.D.;
 et al.,

Defendants - Appellees.

2:10-cv-01163-KJD-GWF

ORDER

This matter is before the Court on referral from the United States Court of Appeals for the Ninth Circuit for the limited purpose of determining whether *in forma pauperis* status should continue for this appeal or whether the appeal is frivolous or taken in bad faith.

Plaintiff failed to provide proof of service of the complaint on Defendants within the time provided. On July 18, 2012, the Court provided notice (#41) that Plaintiff's complaint would be dismissed if service was not made on or before August 17, 2012. In response, Plaintiff submitted copies of subpoenas issued to the Defendants, but failed to provide valid proof of service of summons and complaint as required by Fed. R. Civ. P. 4. On January 16, 2013 the Court issued its Order (#43) dismissing the case, noting that subpoenas are not the proper form of service in a civil case. Plaintiff, in his Motion for Reconsideration (#45), reasserted his contention that subpoenas

1 constitute adequate service. The docket does not contain any evidence that the Defendants have ever
2 been properly served.

3 Accordingly, Plaintiff should not be permitted to proceed *in forma pauperis* where, as here,
4 he has failed to properly serve the Defendants or provide proof of such service as ordered by the
5 Court. The Court finds that the appeal is frivolous and not taken in good faith. 28 U.S.C.
6 §1915(a)(3).

7 Accordingly, Plaintiff's *in forma pauperis* status is hereby **REVOKED**.

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9 DATED: April 12, 2013.

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13 Kent J. Dawson
14 United States District Judge
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